

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application )

of )

MOLOKAI PUBLIC UTILITIES, INC. )

For review and approval of rate )  
increases; revised rate schedules; and )  
revised rules. )  
\_\_\_\_\_ )

Docket No. 2009-0048

PUBLIC UTILITIES  
COMMISSION

2009 SEP 18 P 2:11

FILED

**MOLOKAI PUBLIC UTILITIES, INC.'S  
MEMORANDUM IN OPPOSITION TO  
COUNTY OF MAUI'S MOTION TO INTERVENE**

and

**CERTIFICATE OF SERVICE**

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**MOLOKAI PUBLIC UTILITIES, INC.'S  
MEMORANDUM IN OPPOSITION TO  
COUNTY OF MAUI'S MOTION TO INTERVENE**

**I. INTRODUCTION AND SUMMARY OF ARGUMENTS**

Pursuant to Hawaii Administrative Rules ("HAR") § 6-61-41(c), MOLOKAI PUBLIC UTILITIES, INC. ("MPU"), a Hawaii corporation, by and through its attorneys, Morihara Lau & Fong LLP, respectfully submits this Memorandum in Opposition to the COUNTY OF MAUI's (the "County") Motion to Intervene, filed on September 11, 2009 ("Motion to Intervene").<sup>1</sup>

MPU opposes the Motion to Intervene on the grounds that any interests that the County may allegedly have regarding MPU's amended application and

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<sup>1</sup> HAR § 6-61-41(c) provides, in relevant part: "An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion[.]" HAR § 6-61-41(c) (emphasis added). HAR § 6-61-22 states, in relevant part: "When the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation." HAR § 6-61-22 (emphasis added). The County's Certificate of Service indicates that the Motion to Intervene was served upon MPU by "personal hand delivery" on September 11, 2009. Thus, in light of this service date, MPU asserts that its memorandum in opposition is timely, pursuant to HAR §§ 6-61-22 and 6-61-41.

requests in the subject docket are not special and unique and are adequately and sufficiently represented by the Division of Consumer Advocacy ("Consumer Advocate"), who is statutorily required to represent and advance the interests of all consumers. In addition, the County has not demonstrated or provided any reliable evidence that its intervention as a party would contribute in any significant or material way to the development of a sound record regarding the reasonableness of MPU's proposed rate increase or that its participation would not unduly delay the proceedings or unreasonably broaden the issues presented in this docket. In fact, MPU contends that the County's allegations and statements made in its Motion to Intervene indicate that its participation as a party or intervenor would indeed unduly delay the proceedings and unreasonably broaden the pertinent ratemaking issues to be decided in this docket.

The Hawaii Supreme Court has made clear that intervention as a party to a proceeding before the Commission "is not a matter of right but is a matter resting within the sound discretion of the Commission." See In re Application of Hawaiian Elec. Co., Ltd., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975) ("In re HECO"). MPU contends that the County has failed to satisfy the intervention requirements set forth in HAR § 6-61-55, and that the allegations raised in its Motion to Intervene are not reasonably pertinent to and unreasonably broaden the issues already presented, as required under HAR § 6-61-55(d).

For these reasons and those set forth more fully herein, MPU respectfully requests that the Commission deny the County's Motion to Intervene.

## **II. PROCEDURAL BACKGROUND**

On June 29, 2009, MPU filed its Amended Application seeking Commission review and approval of rate changes and increases, revised rate schedules and rules, and other rate making matters as described therein ("General Rate Case Application"). Among other things, MPU is seeking to: (1) increase its rates and charges for its water service; (2) establish an Automatic Power Cost Adjustment Clause, which permits adjustments for electric costs during the year; (3) establish a Purchased Fuel Adjustment Clause for the fuel component of its water costs; and (4) amend Rule XX of its Rules and Regulations to increase its reconnection charge.

On September 3, 2009, pursuant to HRS §§ 269-12 and 269-16, the Commission held a public hearing regarding MPU's General Rate Case Application at the Mitchell Pauole Center Conference Room on the island of Molokai.

On September 11, 2009, the County filed its Motion to Intervene, in which it seeks to intervene and become a party to this docket.

## **III. DISCUSSION**

The County's Motion to Intervene should be denied for failure to meet the requirements for intervention set forth in HAR § 6-61-55.

The County, who is a customer of MPU and who alleges that it depends upon water service provided by MPU for firefighting and other purposes such as maintaining the County's public parks, seeks intervention based upon, among other things, the following grounds: (1) that the Commission "previously recognized the significance of the County's participation in the temporary rate increase proceeding in

Docket No. 2008-0115 when the [Commission] named the County as a party,”<sup>2</sup> (2) that its “interests are not adequately represented by the Consumer Advocate, given the Consumer Advocate’s positions in the prior dockets”;<sup>3</sup> (3) that “[t]here are no other means by which [it] will be able to directly advocate its interests in this proceeding and be permitted to file an appeal, should an appeal be necessary”;<sup>4</sup> (4) that it “does not seek to intervene to broaden the issues or delay the proceedings”;<sup>5</sup> and (5) that its “interests in this proceeding differ from the general public’s interest.”<sup>6</sup>

**A. Intervention Standard.**

It is well-established that intervention as a party in a Commission proceeding “is not a matter of right but is a matter resting within the sound discretion of the [C]ommission.” See In re HECO, 56 Haw. at 262, 535 P.2d at 1104; see also In re Application of KRWG Corporation, dba Kohala Ranch Water Co., Docket No. 2008-0283, Order (February 27, 2009); In re Application of Paradise MergerSub, Inc., et. al., Docket No. 04-0140, Order No. 21226 (August 6, 2004); and In re Megumi Matsumoto dba Big Blue Hawaii, Docket No. 05-0134, Order No. 22122 (November 16, 2005).

HAR § 6-61-55 sets forth the requirements for intervention. HAR § 6-61-55(a) states, in relevant part, that “[a] person may make an application to intervene . . . by filing a timely written motion . . . stating the facts and reasons for the

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<sup>2</sup> Motion to Intervene at 8.

<sup>3</sup> Id.

<sup>4</sup> Id. at 9.

<sup>5</sup> Id. at 11.

<sup>6</sup> Id. at 12.

proposed intervention and the position and interest of the [movant]." HAR § 6-61-55(b) further states:

- (b) The motion shall make reference to:
  - (1) The nature of the [movant's] statutory or other right to participate in the hearing;
  - (2) The nature and extent of the [movant's] property, financial, and other interest in the pending matter;
  - (3) The effect of the pending order as to the [movant's] interest;
  - (4) The other means available whereby the [movant's] interest may be protected;
  - (5) The extent to which the [movant's] interest will not be represented by existing parties;
  - (6) The extent to which the [movant's] participation can assist in the development of a sound record;
  - (7) The extent to which the [movant's] participation will broaden the issues or delay the proceeding;
  - (8) The extent to which the [movant's] interest in the proceeding differs from that of the general public; and
  - (9) Whether the [movant's] position is in support of or in opposition to the relief sought.

HAR § 6-61-55(b). Further, HAR § 6-61-55(d) provides that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." HAR § 6-61-55(d) (emphasis added); see also In re HECO, 56 Haw. at 262, 535 P.2d at 1104.

In addition, the Commission needs to insure "the just, speedy and inexpensive determination of every proceeding," which is the purpose of the Commission's Rules of Practice and Procedure as set forth in HAR § 6-61-1.<sup>7</sup> Based on the standards set forth above and the reasons discussed herein, the County's Motion to Intervene should be denied.

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<sup>7</sup> HAR § 6-61-1 (stating, in relevant part, that the rules should be "liberally construed to secure the just, speedy, and inexpensive determination of every proceeding").

**B. The County's Interests With Respect to MPU's General Rate Case Application Can Be Adequately Represented by the Consumer Advocate.**

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Pursuant to HAR § 6-61-55(b)(5), the County is required to establish "[t]he extent to which [its] interest will not be represented by existing parties." Similarly, pursuant to HAR § 6-61-55(b)(8), the County is required to establish "the extent to which [its] interest in the proceeding differs from that of the general public."

With respect to these requirements, the County claims that: (1) it has a previously recognized "'interest in ensuring that its citizens have access to basic water and wastewater services,'"<sup>8</sup> (2) as a customer who "relies upon water provided by [MPU] for firefighting and other purposes . . . a substantial and exorbitant rate increase as proposed by . . . MPU will have a significant financial impact on the County";<sup>9</sup> and (3) "[its] interests are not adequately represented by the Consumer Advocate, given the Consumer Advocate's positions in the prior dockets."<sup>10</sup> The County does not expand upon or support these claims, nor does it attempt to demonstrate how its interests are somehow different from the customer interests already represented by the Consumer Advocate in this proceeding. MPU contends that this is because the County's interests in the general ratemaking issues in this proceeding (i.e., revenues, expenses, rate base, rate of return, and cost of service) are, in fact, generally the same as that of the general public.

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<sup>8</sup> Id. at 8 (quoting Order Instituting a Proceeding to Provide Temporary Rate Relief to Moloka'i Public Utilities, Inc., Wai'ola O Moloka'i, Inc. and MOSCO, Inc., filed June 16, 2008, Docket No. 2008-0115 at 15-16.)

<sup>9</sup> Id.

<sup>10</sup> Id.

Pursuant to HRS § 269-51, the Consumer Advocate is statutorily mandated to “represent, protect, and advance the interest of all consumers, including small businesses, of utility services.” HRS § 269-51 (emphasis added). Further, HRS § 269-54(b)(7) provides the Consumer Advocate with the express authority to “[r]epresent the interests of consumers of utility services before any state or federal agency or instrumentality having jurisdiction over matters which affect those interests.” Accordingly, the Consumer Advocate’s statutory duties clearly extend to all customers of MPU, including residential and commercial, and private and public customers alike. Indeed, the relief which MPU requests in this proceeding affects the public in general, and, contrary to its allegations otherwise, the County is not uniquely affected. Thus, the County’s interests in this ratemaking proceeding will be adequately represented by the Consumer Advocate.

Further, the Commission has consistently held that the Consumer Advocate appropriately advances the interests of all consumers. See, e.g., In re Molokai Public Utilities, Inc., et. al., Docket No. 2008-0115, Order Denying Motion to Intervene Filed by West Molokai Association and Setting Procedural Deadlines (August 8, 2008) (“Docket No. 2008-0115”); In re Application of Hawaiian Electric Co., Inc., Docket No. 2006-0386, Order No. 23366 (April 13, 2007); In re Hawaiian Electric Co., Inc., et. al., Docket No. 2006-0431, Order No. 23097 (December 1, 2006) (“Order No. 23097”); In re Application of Molokai Public Utilities, Inc., Docket No. 02-0371, Order No. 19955 (January 14, 2003).

In Order No. 23097, the Commission denied a motion to intervene submitted by an environmental interest group – Life of the Land (“LOL”). In seeking



intervention, LOL argued that the Consumer Advocate could not represent its interests, because the Consumer Advocate represented and protected the general public and consumer's interests, while LOL represented specialized environmental interests. Rejecting LOL's argument, the Commission found instead that LOL's environmental interests were not distinct from the general public and could be adequately represented by the Consumer Advocate. See Order No. 23097 at 10.

Similarly, in Docket No. 2008-0115, the Commission denied a motion to intervene by West Molokai Association ("WMA") on grounds that WMA's interests in the proceeding could be adequately represented by the Consumer Advocate. WMA attempted to distinguish its interests from those represented by the Consumer Advocate as follows:

[The Consumer Advocate] represents many of the common goals of all parties to this proceeding, namely provision of essential water and wastewater services over the long term at reasonable rates. However, because [the Consumer Advocate] must represent the interests of customers of [Wai'ola], which customers include Mauanaloa [sic], Kualapuu, south Kale and other adjacent areas in Central and West Molokai, [the Consumer Advocate] must divide its attention in representing WMA's interests. Further, [the Consumer Advocate] neither directly nor indirectly suffers the consequences of a Commission decision adversely impacting consumers. Only WMA has that perspective to offer the Commission. Further, WMA has access to information which will be of assistance to the Commission and to [the Consumer Advocate].

Docket No. 2008-0115 at 4 (brackets in original). The Commission found WMA's assertions that the Consumer Advocate could not adequately represent its interests unpersuasive and without merit. In so finding, the Commission held that there was nothing in the record to preclude the Consumer Advocate from fulfilling its statutory mandate to represent all consumers in the proceeding. See id. at 6-7.

Applying these same principles here, it is readily apparent that the County's alleged interests in this proceeding can be adequately represented by the Consumer Advocate, and there is nothing in the record to preclude the Consumer Advocate from fulfilling its statutory mandate to represent all consumers in this proceeding. First, despite the County's suggestions that it represents a public or "public safety" interest (i.e., firefighting and other purposes) that somehow distinguishes its interests in this proceeding from other customers, the concern it states relating to this interest is that it will be "significant[ly] financial[ly] impacted . . . as a customer"<sup>11</sup> by any proposed rate increase.<sup>12</sup> The County's stated concern, which relates to the financial impact of the General Rate Case Application upon its interests, is a concern that is similarly shared by all customers of MPU, and thus, the County has not shown an interest that is distinct or unique from the interests that are statutorily represented by the Consumer Advocate. Indeed, all of MPU's customers stand to be financially impacted by the proposed rate increase. Under the circumstances, the Consumer Advocate, through its statutory mandate and lack of any financial self-interest, is effectively the party in the best position to balance the interests of the various customer classes (i.e., private and public customers) in a manner that is fair, just, reasonable, and in the public's best interest.

Second, the County's arguments attempting to show that its interests and the Consumer Advocate's are different do not relate to general rate case issues.

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<sup>11</sup> Id.

<sup>12</sup> Although the County asserts that the proposed rate increase would have a significant financial impact on it as a customer, it should be noted that the County is not charged for water utilized for fire fighting purposes, including water used from fire hydrants. Rather, the County is only charged for its metered use of water at a handful of County public parks within MPU's service area, the combined monthly charges for which total less than \$500.00.

Instead, the County's arguments relate to interests in other proceedings or dockets, which involve issues which are not relevant for ratemaking purposes and are not at issue in this proceeding. Specifically, the County refers to the following dockets before the Commission: (1) Docket No. 2008-0115, in which the Commission sua sponte initiated a proceeding to provide temporary rate relief to MPU, Wai'ola O Moloka'i, Inc. ("WOM"), and MOSCO, Inc. ("Mosco") (collectively, the "Utilities") ("Temporary Rate Proceeding")<sup>13</sup>; and (2) Docket No. 2008-0116, in which the County filed a Formal Complaint against the Utilities alleging that the Utilities' threat of cessation of services would cause Molokai customers harm.

The County argues that "[a]lthough there is no statutory or legal authority for the [Commission] to order the County to acquire and take over the Utilities' systems," the need for the County to potentially take over the Utilities was an issue in the Temporary Rate Proceeding.<sup>14</sup> In this regard, the County claims its interests differ from that of the general public's, because "the PUC and the Consumer Advocate both

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<sup>13</sup> On June 16, 2008, the Commission issued an Order Instituting a Proceeding to Provide Temporary Rate Relief to MPU, WOM, and Mosco ("Order Instituting Temporary Rate Proceeding"). The Temporary Rate Proceeding was opened to address the Utilities' financial inability to continue utility services, and resulted in the approval of temporary rate increases for MPU and WOM's water consumption charges. See Order Approving Temporary Rate Relief for MPU and WOM, issued on August 14, 2008 ("Temporary Rate Relief Order").

MPU recognizes that the County was named by the Commission as a party in the Temporary Rate Proceeding. However, as discussed more fully below, the County's concerns and interests arising from its involvement in the Temporary Rate Proceeding are not relevant or pertinent to resolution of the general rate case issues involved in this ratemaking proceeding. As such, MPU contends that the County's status as a party in that proceeding should not transfer to the grant of intervenor status in the instant rate case proceeding, which involves MPU's request to increase its revenues and corresponding rates. As it pertains to determining MPU's revenue requirement, the County has not provided any suitable grounds as discussed below that would warrant granting the County intervenor status to review what revenue requirement MPU should be entitled. In addition, as discussed above, any financial impact will be similarly experienced by all of MPU's customers and, thus, the County's interests are adequately represented by the Consumer Advocate as part of its statutory mandate to represent the interests of all consumers.

<sup>14</sup> Motion to Intervene at 3.

appeared to be taking the position that the County should or could be required to take over the Utilities.”<sup>15</sup> The County proffers no citations for this statement and MPU is not aware of any statement made by the Consumer Advocate indicating such a position. In fact, the Consumer Advocate has emphatically taken the position that the Utilities should be compelled to continue to provide services.<sup>16</sup> More pertinent, however, this issue is not relevant to the instant rate proceeding.

Notably, the County’s Motion to Intervene does not contain any discussion identifying (1) how the general rate case issues in this proceeding (i.e., revenue requirements issues) would allegedly affect or impact the County’s concerns regarding potentially being required to take over the Utilities, and/or (2) why the County’s involvement in those other dockets alone is not sufficient to protect its interests. More specifically, the County has failed to provide any support for why these issues are *material or relevant for ratemaking purposes*.

Since the Temporary Rate Proceeding, MPU has been committed to and has continued to provide water service to all of its customers. By letter dated September 8, 2008, MPU (along with WOM and Mosco) stated that with the temporary rate increase in effect, it was “confident that the [U]tilities are able and therefore will remain operational for the period of the temporary rate increase . . . and therefore confirm to the Commission that the [U]tilities will continue in operation in accordance with the Temporary Rate Relief Order, and hereby revoke and rescind all prior notices

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<sup>15</sup> Id. at 12.

<sup>16</sup> See Order Instituting Temporary Rate Proceeding at 6-7.

of intent to terminate operations.”<sup>16</sup> This general rate case is filed for the purpose of ensuring that MPU will have the resources necessary and critical to MPU’s continued operation. Any concerns in this proceeding, therefore, that the County may be required to take over the Utilities, aside from being unfounded and misplaced, are outside the scope of this rate making proceeding and should not be considered as a reasonable basis for intervention.

In addition, it is not enough for the County to broadly allege that the Consumer Advocate “may” take a position that is contrary to its interests.<sup>17</sup> This contention does not meet the requirement set forth in HAR § 6-61-55(b)(5), which specifically requires a reference to “[t]he extent to which the applicant’s interest will not be represented by existing parties.”<sup>18</sup> Mere speculation about the possibility of the Consumer Advocate taking a contrary position in this proceeding does not fulfill the requirements for intervention under the Commission’s Rules of Practice and Procedure and does not have any bearing on the Consumer Advocate’s ability to carry out its statutorily prescribed duties to all consumers in rate cases.

Furthermore, the issues and concerns raised by the County in its Motion to Intervene, which are more related to MPU’s “fitness” as a utility, are not germane to *ratemaking issues and would not add measurably or constructively to the instant proceeding*. The Commission typically reviews financial “fitness” of a utility in connection with, among other things, the issuance of a certificate of public convenience

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<sup>16</sup> Letter dated September 8, 2008, from the Utilities to Commission Chair Caliboso filed in Docket No. 2008-0115.

<sup>17</sup> Motion to Intervene at 10 (“The County is concerned that the Consumer Advocate may take similar positions in this proceeding[.]”).

<sup>18</sup> HAR § 6-61-55(b)(5) (emphasis added).

and necessity (CPCN) or the sale or transfer of utility assets and/or operations and not as part of a ratemaking proceeding. See, e.g., In re Application of Mauna Lani STP, Inc., Docket No. 05-0229, Decision and Order No. 22299 (February 28, 2006). By contrast, the issues involved in a general rate case proceeding include, for example, whether: (1) the proposed rate increase is reasonable; (2) the proposed rates and charges are just and reasonable; (3) the projected operating expenses for the test year are reasonable; (4) the revenue forecasts for the test year are reasonable; (5) the projected rate base for the test year is reasonable; (6) the properties included in the rate base are used or useful for public utility purposes; and (7) the rate of return requested is fair. See, e.g., In re Application of Laie Water Co., Inc., Docket No. 2006-0502, Stipulated Procedural Order No. 23375 (April 19, 2009); In re Application of Waimea Wastewater Co., Inc., Docket No. 2008-0261, Stipulated Procedural Order (January 12, 2009); In re Application of KRWCo Corporation, dba Kohala Ranch Water Co., Docket No. 2008-0283, Stipulated Procedural Order (February 11, 2009). Therefore, allowing the County to participate and raise issues or allegations regarding its interests in other dockets would unreasonably broaden the issues, unduly delay the proceeding, and deter the Commission from ensuring the "just, speedy and inexpensive determination" of this proceeding.<sup>19</sup> Accordingly, the County's interests involving other dockets are not reasonably pertinent to resolution of the general rate case issues here and its stated interests do not rise to a level in which it should be granted full-party status.

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<sup>19</sup> See HRS § 6-61-1; see also HRS § 269-16(d), which states, in relevant part, that the Commission shall "make every effort to complete its deliberations and issue its decision as expeditiously as possible[.]"

Finally, the County's claims that it has an interest in ensuring the Commission is presented with "a complete and full financial picture of the Utilities and its parent company"<sup>20</sup> raise general ratemaking issues that, pursuant to the Consumer Advocate's powers and duties under HRS § 269-54, have been historically and are comprehensively reviewed, investigated, and advocated by the Consumer Advocate in other proceedings. Consequently, the County's interests can be adequately represented, protected and advanced by the Consumer Advocate in this general ratemaking proceeding. Moreover, the County's participation in this proceeding as an intervenor based on these types of general ratemaking allegations will likely result in duplicative efforts and submissions of the Consumer Advocate, resulting in potential delays and waste of regulatory resources, and should be prohibited by the Commission.

For the reasons set forth above, the County's Motion to Intervene should be denied. MPU contends that the Consumer Advocate, which has been statutorily charged with representing all consumer interests before the Commission, will adequately represent the County's interests and develop a sound record on the general rate case issues in this proceeding. There are clearly other means available whereby the County's alleged interests can be protected, and it has failed to distinguish itself from other customers' interests that are generally represented as a whole by the Consumer Advocate. Moreover, finding that the Consumer Advocate will adequately represent the interests of MPU's customers in this proceeding, including the County, is *consistent with the "just, speedy and inexpensive determination of every proceeding,"*

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<sup>20</sup> Motion to Intervene at 11.

which is the purpose of the Commission's Rules of Practice and Procedure as stated in HAR § 6-61-1.

**C. The County's Participation Would Unreasonably Broaden the Issues Already Presented, Unduly Delay the Proceedings and Will Not Assist the Commission in Developing a Sound Record.**

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*In its Motion to Intervene, the County also alleges and/or represents the following:* (1) that "[h]aving been a party to the 2008 proceedings in Docket No. 2008-0115, the County is familiar with [WOM], MPU and the Utilities' positions, financial information, and organizational structure"<sup>21</sup>; and (2) "[i]n order to have a full and complete record in these proceedings, it is necessary to have the participation of the County to the preceding matter."<sup>22</sup> MPU claims that these allegations and/or factual representations, noted above, are either irrelevant or would, in fact, unduly broaden the issues and delay this general rate case proceeding.

The County has not demonstrated how its participation would assist the Commission in the development of a sound record regarding MPU's revenues, expenses, and/or other general ratemaking issues. Although the County claims that its participation in and familiarity with the Temporary Rate Proceeding will allow it to provide "much-needed context to the underlying issues which form the bases for . . . MPU's request for a rate increase,"<sup>23</sup> the County fails to acknowledge the Consumer Advocate's own participation in the same proceeding and its knowledge and familiarity with the same information and underlying issues regarding MPU's operations. The County has not

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<sup>21</sup> Id. at 10-11.

<sup>22</sup> Id. at 11.

<sup>23</sup> Id.



shown, therefore, any specialized interest or knowledge that the Consumer Advocate does not itself have or could not obtain through discovery with MPU. The County's assertion, therefore, lacks credibility and is without merit.

The County has also failed to substantiate how its participation in this proceeding will assist the Commission in the development of a sound record and refrain from unreasonably broadening the issues. As noted above, the general rate case issues in this proceeding involve the costs and revenues required for MPU to provide water service to its customers. The County's stated concern with respect to its interests in other dockets is wholly irrelevant to this ratemaking proceeding, would unduly broaden and/or confuse the issues and cause potential delays. Moreover, it is apparent from the County's Motion to Intervene that it intends to utilize the proceeding as a means to raise and address issues regarding MPU's fitness and/or "piercing the corporate veil"<sup>24</sup> that are either irrelevant or are more properly addressed in other dockets or proceedings. Accordingly, the Commission should not consider these allegations and/or alleged factual representations, and should prohibit the County from utilizing the intervention process to unreasonably broaden the ratemaking issues already presented and to unduly delay the proceedings.

In sum, the County's Motion to Intervene fails to meet the intervention requirements set forth in HAR § 6-61-55, and should be denied. As emphasized above, the County has not presented sufficient evidence establishing that its interests are distinct from the interests statutorily represented by the Consumer Advocate. The concerns it states relating to its interests are either not relevant for ratemaking purposes

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<sup>24</sup> Id. at 12. In its Motion to Intervene, the County refers to a Department of Health proceeding, which is not applicable or relevant to the instant proceeding.

or are those that the Consumer Advocate historically reviews and examines, pursuant to its obligations imposed under HRS § 269-54. In addition, none of the County's allegations referred to herein nor any of the other allegations stated in its Motion to Intervene rise to the level that should be determined as allegations that are reasonably pertinent to and that do not unreasonably broaden the issues. Stated differently, the County's allegations are not reasonably pertinent to the resolution of the general rate case issues involved in this ratemaking proceeding and its stated interests do not rise to a level in which it should be granted full-party status.

**D. If the Commission Believes That the County Should Be Allowed to Participate, Then the County's Participation Should Be Limited Solely to Participant Status.**

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In the alternative, the County seeks participation without intervention, pursuant to HAR § 6-61-56. If the Commission is inclined to allow the County to participate in this proceeding, MPU would not object to the Commission granting the County solely participant status, without intervention, subject to the following conditions and/or limitations: (1) the County's participation does not in any manner duplicate the efforts of the Consumer Advocate, unreasonably broaden the pertinent issues already presented, or unduly delay the proceeding; (2) the County's participation may be reconsidered by the Commission if it determines that any of the County's efforts in this proceeding are duplicative, unreasonably broaden the pertinent issues in this docket or unduly delay the proceeding; (3) the County shall not be permitted to participate in any settlement agreement between the parties or to affect the schedule of proceedings or the statement of issues; and (4) the County shall be required to comply with the Commission's Rules of Practice and Procedure. See In re Hawaii Electric Light Co.,

Docket No. 99-0207, Order No. 17532 (February 10, 2000) (granting participation, without intervention, subject to the condition that its participation does not in any manner duplicate the efforts of the Consumer Advocate); and In re Hawaiian Electric Co., Inc., Docket No. 03-0417, Order No. 20861 (March 23, 2004) (denying two non-profit community corporations and one unincorporated community group intervention, but granting participation, without intervention, subject to certain limitations and conditions).

#### IV. CONCLUSION

Based on the foregoing reasons and the authorities cited above, the County's Motion to Intervene should be denied. In that connection, MPU respectfully requests that the Commission issue an order denying the County's Motion to Intervene. In the alternative, if the County is allowed to participate in this docket, without intervention, MPU requests an order denying the Motion to Intervene, and instead, granting the County participant status, without intervention, pursuant to HAR § 6-61-56 and subject to the limitations and conditions discussed herein.

DATED: Honolulu, Hawaii, September 18, 2009.

A handwritten signature in black ink, appearing to read "Michael H. Lau", written over a horizontal line.

Michael H. Lau  
Yvonne Y. Izu  
Sandra L. Wilhide

Morihara Lau & Fong LLP  
Attorneys for Molokai Public Utilities, Inc.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were duly served on the following party, by having said copies delivered as set forth below:

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EXECUTIVE DIRECTOR  
DIVISION OF CONSUMER ADVOCACY  
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